

AMENDMENT NUMBER ONE

THIS AMENDMENT to the Professional Services contract made as of 16th day of October, 2015, in the Territory of the US Virgin Islands, by and between the **GOVERNMENT** of the Virgin Islands DEPARTMENT OF PROPERTY AND PROCUREMENT, on behalf of the DEPARTMENT OF TOURISM, whose physical address is 2318 Kronprindsens Gade, St. Thomas, US Virgin Islands 00802 (hereinafter referred to as "**GOVERNMENT**") and J. Walter Thompson U.S.A., INC. (hereinafter referred to as "**CONTRACTOR**").

Both parties witness to being duly authorized to execute this agreement and will attest accordingly when and where necessary.

WITNESSETH

WHEREAS, the Government and the contractor entered into Contract for Professional Services Number PC-111-DOT-14 (hereinafter referred to as the "Contract") on October 1, 2013,

WHEREAS, the expiration date of the Contract is September 30, 2015 and

WHEREAS, the parties intend to perform the functions, duties and obligations as agreed in the Contract, but wished to extend the term of the contract for one additional year until a new Request for Proposal is completed. However, if the above named Contractor is not selected at the end of the bid process, the Government has the right to cancel the existing contract at the end of the first six months of the aforementioned term. The Government will notify the Contractor in writing thirty days prior to the date of termination.

NOW THEREFORE, in consideration of the above, and intending to be legally bound by this written instrument, the parties hereby covenant and agree as follows:

1. ADDENDUM I of the Contract (Scope of Work) and the rate of pay shall remain the same as outlined in the existing Contract No. PC-111-DOT-14.
2. ADDENDUM II (Compensation) will remain the same as outlined in the existing contract. However, Addendum IIA below outlines the yearly breakdown. The Contractor will continue to submit monthly invoices, which will include a monthly management fee.

PC-111-DOT-14

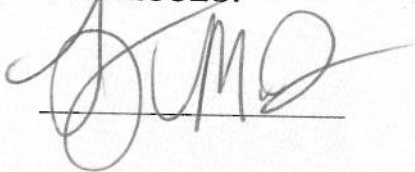
TERMS AND CONDITIONS

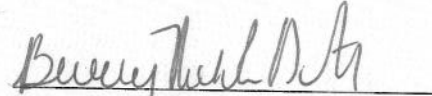
3. This amendment of the Professional Services Contract is subject to the availability and appropriation of funding and the approval of the Governor of the US Virgin Islands.
4. Except as expressly amended in this Amendment of Professional Services Contract, all terms of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

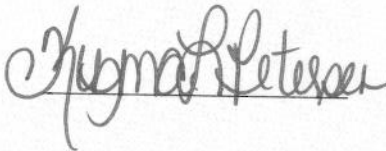
WITNESSES:

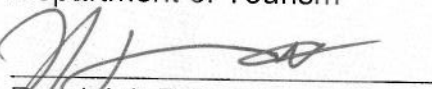
GOVERNMENT OF THE US VIRGIN ISLANDS




Beverly Nicholson Doty
Commissioner
Department of Tourism

7/21/15
Date

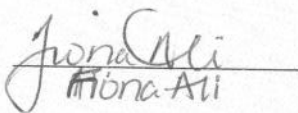


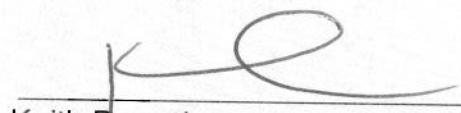

Randolph Bennett
Commissioner
Department of Property & Procurement

10/5/15

WITNESS:

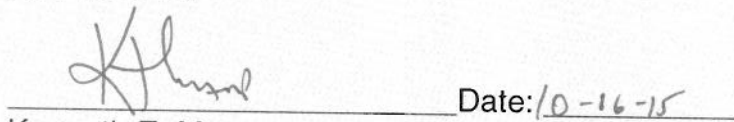
CONTRACTOR




Keith Berard
SVP, Director of Finance
J. Walter Thompson North America

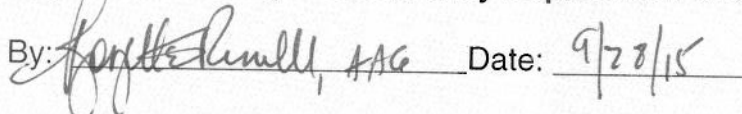
7/10/15
Date

APPROVED:


Kenneth E. Mapp
Governor of the US Virgin Islands

Date: 10-16-15

Approved For Legal Sufficiency Department of Justice:

By:  Jonathan Russell, AG Date: 9/28/15

PO07DOTT16

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made as of the 1st day of October, 2013 in the Territory of the Virgin Islands, by and between the **GOVERNMENT OF THE US VIRGIN ISLANDS, DEPARTMENT OF PROPERTY AND PROCUREMENT** on behalf of the **DEPARTMENT OF TOURISM** (hereinafter referred to as the "Government"), and **J. WALTER THOMPSON U.S.A., Inc.** (hereinafter referred to as the "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to facilitate the promotion of tourism in the United States Virgin Islands and to further goodwill in the travel industry through the preparation and publication of advertising materials in various media, through merchandising and other projects related hereto, and through any other advertising activities approved by the Commissioner of Tourism, which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract.

2. TERM

This Contract shall commence on October 1, 2013 or upon the execution of the Governor and shall terminate September 30, 2015, unless extended by mutual agreement of both parties or terminated earlier pursuant to paragraph 19 herein. The Government shall have an option to renew this contract for an additional one year period immediately following the initial term. Such option shall be exercised by providing Contractor with written notice of the Government's election to renew this contract no later than THIRTY (30) days prior to the end of the initial term. If the Government exercises its option to renew this contract, the parties agree to negotiate in good faith to determine the compensation for the option

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term.

3. **COMPENSATION**

The government in consideration of the performance of the services described in Addendum I (Scope of Work), agrees to pay Contractor a sum which shall not exceed TWO MILLION ONE HUNDRED SIXTY-FOUR THOUSAND DOLLARS AND NO CENTS (\$2,164,000.00) annually for a total amount not to exceed FOUR MILLION THREE HUNDRED TWENTY EIGHT DOLLARS AND NO CENTS (\$4,328,000) in accordance with the provisions set forth in Addendum II (Compensation attached hereto and made a part of this contract.) The Government shall also reimburse Contractor for all media, production and out of pocket costs for work under this contract that are approved in accordance with this contract at net cost.

4. **ADVERTISING BUDGET**

Upon execution of the Contract by the Government of the Virgin Islands, the Contractor will secure advertising which shall not exceed the below mentioned allotment on behalf of the Government. The below mentioned funds are not incorporated within the COMPENSATION portion, as the Contractor's primary source is only to secure Advertising placement on behalf of the Government. Therefore, the Government will reimburse the Contractor in accordance with the provisions of this paragraph. The Contractor may not, however, during the term of this Agreement, expend on the Government's behalf or account, or commit the Government to expend any funds which, in the aggregate, exceed the then current annual advertising budget within the Department of Tourism for the purpose of tourism advertising and promotion which shall not exceed THIRTEEN MILLION EIGHT HUNDRED TWENTY-EIGHT THOUSAND DOLLARS AND NO CENTS (\$13,828,000.00) without the Government's prior consent. The Contractor shall provide to the Commissioner detailed dollar amounts of the level of advertising the Contractor proposes on behalf of the Government for the purpose of Tourism advertising and promotion for contract period.

5. **TRAVEL EXPENSES**

In addition to the compensation for services and other costs as specified in Paragraph 3 above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees

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of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000) annually.

6. **RECORDS**

The Contractor, when applicable, will present documented, precise records of time and/or money expended under this Contract.

7. **MEDIA PURCHASE**

It is understood and agreed that Contractor shall purchase media as principal.

8. **PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the Territory of the Virgin Islands of the United States, and the state of Georgia.

9. **DOCUMENTS, PRINTOUTS, ETC.**

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government (subject to any third party rights) and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

10. **LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such person, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor or whatsoever nature, including but not limited to unemployment insurance and social security taxes of

Contractor, its servants, agents or independent contractors.

11. **ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

12. **INDEMNIFICATION**

Except as otherwise provided for herein, it will be the responsibility of Contractor to make certain that the necessary contracts or releases have been obtained with or from those whose names, likenesses, testimonials, scripts, musical compositions, or other third party materials or rights are used in the Government's advertising or other materials prepared under this agreement, and Contractor agrees to indemnify the Government against any liabilities and expenses (including reasonable attorneys' fees) the Government may incur as a result of claims resulting therefrom and/or proceedings relating to libel, slander, defamation, invasion of privacy, plagiarism, idea misappropriation, infringement of copyright, property right, title or slogan (other than trademark and trademark related causes of action in connection with any trademarks owned by or developed for the Government or for materials used in advertising or other marketing materials for which the Government took responsibility for obtaining necessary rights).

It will be the responsibility of the Government to review materials prepared under this agreement and presented by Contractor to the Government to confirm the accuracy and legality of the descriptions and depictions of the Government's products and services as well as any competitive products and services described or depicted in advertising or marketing materials prepared pursuant to this agreement, and the Government agrees to indemnify Contractor against any liabilities and expenses (including reasonable attorneys' fees) Contractor may incur as a result of claims resulting therefrom and/or proceedings relating to such advertising or other materials relating to false, deceptive, or misleading description, depiction, or comparison of the Government, the Government's products or services, and/or competitive products or services, provided that the materials were

reviewed and approved by the Government prior to their use. In any instances when the Government has taken responsibility for obtaining rights for the use of certain materials in advertising or other marketing material, the Government will indemnify Contractor with respect to any claims relating to use of such materials.

The Government understands that Contractor is a signatory to collective bargaining agreements with the Screen Actors Guild, the American Federation of Television and Radio Artists, and the American Federation of Musicians, and that the use of talent by the Contractor on the Government's behalf will be subject to the terms of such agreements. The Government further recognizes that the terms of such agreements may at times be subject to differing interpretations, and that Contractor will take the position most favorable to the Government. The Government therefore agrees to indemnify Contractor against any claims from talent and/or labor organizations relating to the interpretation of any of such collective bargaining agreements for work under this agreement, whether such claims are asserted during or after the term.

13. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent Contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

14. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

15. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or duly authorized representatives and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

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16. **ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project, which is the subject matter of this Contract, are merged herein.

17. **RIGHT TO WITHHOLD**

If work under this contract is not performed in accordance with the terms hereof, Government will have the right to withhold any payment due to the Contractor, relating to the amount of the dispute, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall, be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by the Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

18. **CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

19. **TERMINATION**

Either party will have the right to terminate this Contract with or without cause on NINETY (90) days written notice to the other party specifying the date of termination. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the 90 days notice.

20. **PARTIAL TERMINATION**

The performance of work under this Contract may, be terminated by the Government, in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes

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effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the NINETY (90) days notice.

21. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

22. CONFLICT OF INTEREST

- (1) Contractor covenants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.
- (2) Contractor further covenants that it is:
 - (a) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official, or an officer or employee of the Legislature, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contracted basis); or
 - (b) a territorial officer or employee and, as such, has:
 - (i) familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - (ii) not made, negotiated or influenced this Contract, in its official capacity.
 - (iii) no financial interest in the Contract as that term is defined in section 1101 (1) of said Code Chapter

23. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

NOTICES

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Any notice required to be given, by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lynn A. Millin – Maduro, Esq.
Commissioner
Department of Property & Procurement
Subbase Building #1
St. Thomas, VI 00802

With copies to:

Beverly Nicholson Doty
Commissioner of Tourism
Department of Tourism
P.O. Box 6400
St. Thomas, USVI 00804

Or hand delivered to:

Estate Contant No. 78-1, 2, 3
3rd Floor, Elainco Building

CONTRACTOR

J. Walter Thompson
3060 Peachtree Road
Suite 1200
Atlanta, GA 30326
Attention: Perry Fair, Chief Creative Officer
cc: Eleni Martine, Client Finance Director
Phone No. 404.365.7471

With copies to:

J. Walter Thompson
466 Lexington Ave.
New York, N.Y. 10017 USA
Attention: General Counsel
Tel: 212-210-7000
Fax: 212-210-7299

24. OTHER PROVISIONS

Addendum I & II attached hereto are a part of this Contract and is incorporated herein by reference.

25. LICENSURE

The Contractor covenants that it has:

- (a.) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b.) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

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26. **FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

27. **NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is a federal offense.

28. **DEBARMENT CERTIFICATION**

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT." In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

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